

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

ANTHONY B. WASHINGTON, JR.,	)	
	)	
Plaintiff,	)	
	)	
	)	No. CIV-17-401-W
v.	)	
	)	
ALFALFA COUNTY BOARD OF	)	
COUNTY COMMISSIONERS, et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

In this 42 U.S.C. § 1983 action filed by Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, Plaintiff seeks relief for alleged constitutional deprivations occurring while Plaintiff was in pretrial custody at the Alfalfa County jail in Cherokee, Oklahoma. The action has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

Before the Court is Plaintiff's Motion for Summary Judgment Against Defendants" (Doc. # 17)("Motion") filed May 30, 2017. In this Motion, Plaintiff seeks "summary judgment" against Defendants Alfalfa County Board of County Commissioners based on the sole allegation that these Defendants were required to file an answer within "20 days from the date [of] service" of process and did not do

so. Plaintiff's Motion is unaccompanied by the required evidentiary materials that would support a motion for summary judgment under Fed. R. Civ. P. 56. Although Plaintiff refers to Fed. R. Civ. P. 12 in the Motion, Rule 12's requirements for the timely filing of an answer are not applicable in this action as Defendants have been ordered to file a responsive pleading within 60 days from the date of service of process pursuant to 42 U.S.C. § 1997e(g)(2). See Order Requiring Service and Special Report (Doc. # 8). The Motion which seeks relief for an alleged failure to timely respond to the Complaint is more appropriately construed as one seeking the Court's entry of a default judgment. Fed. R. Civ. P. 8(e); Fed. R. Civ. P. 55(a), (b)(2). However, no party is presently in default in this proceeding. Therefore, the Motion construed as a motion seeking a default judgment pursuant to Fed. R. Civ. P. 55(b)(2) should be denied.

### RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's Motion for Summary Judgment Against Defendants, construed as a motion seeking a default judgment pursuant to Fed. R. Civ. P. 55(b)(2) as to Defendants Alfalfa County Board of County Commissioners, be DENIED. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by June 21<sup>st</sup>, 2017, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate

review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10<sup>th</sup> Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

This Report and Recommendation does not dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 1st day of June, 2017.

  
GARY M. PURCELL  
UNITED STATES MAGISTRATE JUDGE